**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

SUMM. FOR JUDGMENT NO.634 OF 2003

**IN**

**SUMM.SUIT NO.2230 OF** 2000

Smt Hansa Padamraj Bhandari .. Plaintiff

versus

Mr.Dinesh B.Bhatt .. Defendant

...

Mr.Arvind Rathod i/b A.Rathod for Plaintiff

Mr.Vipul Shukla for Defendant.

**CORAM : D.G. KARNIK, J**

**DATED : 5th April 2005.**

**P.C:-**

1. Heard learned counsel for the parties. The plaintiff advanced a loan to the defendant of Rs.3,00,000/-. The defendant issued a cheque for Rs.3,00,000/- on 1st April, 1997. The cheque when presented was dishonoured. The plaintiff has therefore filed this suit for the recovery of Rs.3,00,000/- and interest thereon under section 80 of

the Negotiable Instrument Act. In the affidavit in reply, the defendant has not denied issuance of the cheque. However, the defendant contends that the defendant has repaid Rs.1,50,000/-. The defendant has annexed to the affidavit copies of the two receipts allegedly issued by the plaintiff. The plaintiff has denied having received Rs.1,50,000/-. Prima facie, the defendant has not produced any evidence/material in respect of payment of Rs.1,50,000/-. However, assuming that defence to be triable no defence of any substance is available to the defendant regarding the balance amount of Rs.1,50,000/- and interest thereon. In the circumstances, the defendant can only be granted unconditional leave to defend the suit to the extent of the principal sum of Rs.1,50,000/- and proportionate interest thereon. The defendant can only be granted conditional leave to defend the balance payment of Rs.1,50,000/- and interest thereon. Accordingly, I pass the following order :

> " The defendant is granted unconditional leave to defend the suit to the extent of Rs.1,50,000/- and proportionate interest of about Rs.75,000/- thereon. The defendant is granted conditional leave to defend the suit

for balance of the suit claim subject to deposit of the principal sum of Rs.1,50,000/- and proportionate interest of about Rs.75,000/- i.e. totally Rs.2,25,000/- in this court witin four weeks. If such deposit is made, the amount shall be invested in a nationalised bank of the choice of the defendant, if such choice is indicated at the time of deposit, failing which the amount shall be invested in Bank of India, Main Branch, Fort Mumbai initially for 13 months to be renewed from time to time till disposal of the suit. "

D.G.KARNIK, J